



POLICE DEPARTMENT

February 11, 2014

MEMORANDUM FOR: Police Commissioner

Re: Sergeant David John
Tax Registry No. 906515
83 Precinct
Disciplinary Case No. 2013-9644

The above-named member of the Department appeared before me on January 10 and January 14, 2014, charged with the following:

1. Said Sergeant David John, on or about December 2, 2011, at approximately 10:00 hours, while assigned to the 83rd Precinct and on duty, in the vicinity of [REDACTED], Kings County, abused his authority as a member of the New York City Police Department, in that he participated in the unlawful frisk of Person A (*As amended*)

P.G. 212-11, Page 1, Paragraph 2 – STOP & FRISK

2. Said Sergeant David John, on or about December 2, 2011, at approximately 10:00 hours, while assigned to the 83rd Precinct and on duty, in the vicinity of [REDACTED], Kings County, abused his authority as a member of the New York City Police Department, in that he participated in the unlawful search of Person A. (*As amended*)

P.G. 212-11, Page 1, Paragraph 3 – STOP & FRISK

The Civilian Complaint Review Board ("CCRB") was represented by Gretchen Robinson, Esq., and Respondent was represented by Andrew Quinn, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty.

SUMMARY OF EVIDENCE PRESENTED

CCRB's Case

CCRB called Person A and Elijah Hunt as witnesses.

Jeffrey Faustin

Person A, [REDACTED] testified via videoconference. [REDACTED] e. On December 2, 2011, he was 17 years old and enrolled in a GED program. He arrived at school that day at approximately 9:30 a.m., picked up his report card, and then went to the nurse because his stomach was hurting. The nurse instructed him to notify his mother that he was coming home early, and she gave him a sick call note excusing him from class. Person A placed the note in his pants pocket with his report card.

Person A left school and took the bus home, getting off the bus at Wilson Avenue. He walked down [REDACTED] toward home. As he crossed [REDACTED] he saw a dark-colored vehicle following him. The car, which had tinted windows, made a U-turn and approached him on [REDACTED]. From that location it

was possible to see the backside of the building at [REDACTED]. Person A saw a Hispanic woman with long hair in the driver's seat. Person A identified the person in the passenger's seat as Respondent and described him as Hispanic-looking, heavyset, a "little bit chubby." Respondent exited the vehicle, and Person A continued walking. He walked toward the basketball court located behind [REDACTED]. That is where Respondent hit and kicked him, shoved him down to the ground, struck him with his radio, handcuffed him, and called for backup. Approximately four additional officers arrived at the scene.

When Person A was lifted to a standing position, he saw a close family friend, Elijah Hunt, standing near the officers. Hunt lived in the building. Respondent proceeded to pat down Person A's legs and waist area and then search inside his pants pockets, turning the pockets inside out. Respondent picked the report card, sick call note, and Person A's hat up off the ground. Nobody at the scene asked Person A where he was coming from, where he was going, how old he was, or why he was not in school.

Person A told Respondent that Hunt was his brother. The officers released Person A after looking at Hunt's identification. Person A went to Hunt's apartment for a drink of water and then walked home. He told his mother about the incident, and she called an ambulance and the police after she saw the "lumps" on him. Person A explained that he had lumps on his head and cheekbone and his head hurt. He did not have any weapons on him at any point that day.

On cross-examination, Person A testified that the corner of [REDACTED] and [REDACTED] was half a block away from [REDACTED]. He was confused and misspoke when he told an investigator in a 2011 telephone interview that he did not wear

a hat on the day of the incident and that he never wore a hat. He explained that although he did not wear a hat on most days, he was certain he was wearing a hat during the encounter with Respondent. He did not recall telling the investigator that the car that approached him was a blue and white police car.

The incident occurred at approximately 10:00 a.m., a time of day that Person A should have been in school. He did not recall if he was carrying a backpack that day. He told an investigator three weeks after the incident that he was carrying a black backpack, but told the same investigator two months later that there was no reason for him to have brought his backpack since he was just picking up his report card. He explained that he usually brought a black backpack to school but left items in his locker at the end of the day.

Person A was arrested at some point in December 2011. As a result of the arrest, his shoelaces were missing. It was when he went to the 83 Precinct to retrieve his laces that he learned Respondent's name.

When the car first approached Person A, Respondent stated that he "fit the description of someone he was looking for." Person A did not realize Respondent was talking to him and did not respond. He did not run but proceeded to "power walk" away toward Menahan Street. He explained that he was power walking because he was in a hurry to tell Hunt something. His power walk did not resemble running. In a February 12, 2012 interview, Person A denied walking away. In a December 28, 2011 interview, he stated that he took two steps back before Respondent exited the vehicle and grabbed him by the neck. In a February 3, 2012 interview, he stated that after Respondent said he fit the description of someone he was looking for, he (Person A) replied, "Officer, that's not

me.” In the same interview, Person A stated that after taking two steps back, Respondent rushed him, grabbed his windpipe, and ripped the skin off his face.

Respondent followed as Person A walked down the block toward Menahan Street and through a parking lot. Respondent was not saying anything. When the four backup officers arrived at the scene, Person A was already on the ground and handcuffed, and Respondent was lying on top of him. Person A denied ever telling investigators that the four backup officers hit him. He remembered telling an investigator that the female officer placed her knee on his back, but he did not recall if that ever actually happened. After Respondent frisked him and searched his pockets, a white officer with a bald head patted him down a second time. Person A did not see Hunt at any point while he was on the ground being beaten. Person A referred to Elijah Hunt as Elijah Hunter and Elijah Edwards. He explained that he has problems with his short-term memory. Both Respondent and the female officer were in police uniform. Person A saw on the day of the incident that Respondent had a nameplate with the name “John” on it.

On redirect examination, Person A testified that his mother filed a lawsuit based on the incident. He has always had problems with short-term memory, but the condition has gotten worse since the incident. He started seeing a therapist twice a week. He also started [REDACTED] to help with headaches. CCRB Exhibits (CCRBX) 1 through 3 are photographs of the incident location.

Upon questioning by the Court, Person A testified that he power walked quickly. When he is power walking, a person has to run in order to catch up to him. He power walked for half a block before Respondent reached him.

Elijah Hunt

Hunt is a 24-year-old resident of [REDACTED]. He is currently unemployed but used to work as a bouncer at a club. In 2013, he was convicted of attempted possession of a weapon in the fourth degree. He has known Person A for eight years and sees him as a little brother. He was sleeping in his fifth-floor apartment when he heard people loudly and aggressively screaming outside his window. When he looked out the window he saw a bunch of police officers punching and kicking a man on the ground. He watched for four minutes and saw one of the officers hit the man in the head with a radio.

When Hunt saw that the man on the ground was Person A, he put on his clothes and ran downstairs. There were six or seven officers present, and Hunt asked what was going on. At the time, Person A was standing upright and handcuffed. Hunt observed a Hispanic male officer who was 5'7" or 5'8" tall and had a mustache touch around Person A's pockets and then dig his hands inside the pockets. Hunt told one of the officers that Person A was his little brother and asked again what was going on. The officer said something about Person A not being in school and told Hunt that Person A could be released so long as he (Hunt) showed photo identification. Person A was released after Hunt presented his identification and signed a release form. Hunt did not recall ever hearing the officers ask Person A where he was coming from, where he was going, or why he was not in school. Hunt did not ascertain any of the officers' names.

On cross-examination, Hunt confirmed that he has never been known as Elijah Hunter or Elijah Edwards. His bedroom window faced Wilson Avenue. The incident occurred about 20 feet from the backdoor of the building. All of the officers at the scene were dressed in uniform and were involved in beating Person A. None of the officers used

a nightstick. Hunt saw an officer strike Person A in the head with a radio, but he could not say which of the officers committed that act. Hunt saw just one officer search Person A. That officer was not noticeably heavyset. Hunt did not recall if the officer turned Person A's pockets inside out.

Person A was pretty good about going to school, and Hunt was surprised that Person A was outside instead of in school that day. Respondent's Exhibit (RX) A is the Youth Referral Report that Hunt signed for Person A's release, and Court Exhibit 1 is an unredacted copy of the report. Hunt has never seen Person A power walk.

On redirect examination, Hunt testified that he was unaware that Person A complained of having a stomach ache that day. CCRBX 4 and 5 are photographs of the back of 140 Menahan Street, showing the location of Hunt's bedroom window, the site of the physical altercation, and the building's backdoor. CCRBX 6 is an aerial view of the area.

Upon questioning by the Court, Hunt clarified that it was Person A's pants pockets that were searched.

Respondent's Case

Respondent called Police Officer Sully Ceballos and Police Officer Thomas Turner as witnesses, and he testified on his own behalf.

Police Officer Sully Ceballos

Ceballos, a nine-year member of the Department, is currently assigned to the 83 Precinct. On December 2, 2011, she was working with Police Officer Thomas Turner

and Respondent. Respondent weighs approximately 350 pounds today, and weighed a lot more at the time of the incident. At approximately 10:00 a.m. that day, they were driving around doing a truant initiative. She explained that this was a citywide initiative that required officers to pick up anyone 17 years of age and younger and bring them to school or a holding facility. The officers were dressed in uniform, and Ceballos drove an unmarked blue Department car. The car windows were not tinted. Respondent sat in the passenger's seat, and Turner sat in the backseat.

While driving southbound on [REDACTED] the officers observed Person A crossing the street at the intersection with [REDACTED]. Person A appeared young, and the officers decided to ask him how old he was. Ceballos pulled the car close to Person A, and Respondent asked him his age or what school he attended. Person A did not respond and instead took off running. Respondent and Turner jumped out of the car and chased after Person A.

The next time Ceballos saw Person A was behind the building at [REDACTED]. [REDACTED] Person A was on the ground. Respondent and Turner were standing nearby, along with three or four other officers. Ceballos did not recall seeing a black backpack. She did not see anyone frisk Person A or search his pockets. At no point did she see Respondent touch Person A nor hear Respondent give an order for Person A to be searched. Turner lifted Person A to a standing position. Person A was very calm and did not appear to have sustained any injuries. RX B is a photograph of the back of 140 Menahan Street, showing the specific locations where Ceballos observed Person A and the officers. Person A was ultimately released to a man who identified himself as Person A's brother. Ceballos explained that truants can be released to family members as a courtesy.

On cross-examination, Ceballos testified that the car she was driving was dark blue. She confirmed that the only reason they stopped Person A was because he looked young. Approximately two to three minutes passed between the time Respondent and Turner jumped out of the car and the time Ceballos saw them again behind the building. She did not know what occurred during the interim. She did not see who handcuffed Person A. Hunt was already present at the scene when she got there. She did not recall hearing any of the officers ask Person A where he was coming from, where he was going, or why he was not in school.

Turner told Ceballos that he conducted a frisk of Person A. At no point did Ceballos see a hard object on Person A, and she did not know why Turner indicated "hard object" as a basis for the frisk on the Stop, Question, and Frisk Report (UF-250) that he prepared in relation to the incident. CCRBX 7 is a copy of the report. Besides running away, Ceballos did not see Person A make any furtive movements. CCRBX 8A through D are photographs of the officers who responded to the scene.

Police Officer Thomas Turner

Turner, a 15-year member of the Department, is currently assigned to the 83 Precinct. He has known Respondent for eight years. He estimated that Respondent was 5'11" tall and weighed 280 or 300 pounds, but he was perhaps 100 pounds heavier in December 2011.

At approximately 10:00 a.m. on December 2, 2011, Turner was riding in a dark blue unmarked car with Respondent and Ceballos. He did not recall if the car windows were tinted. Ceballos was driving, Respondent was in the passenger's seat, and Turner

was in the backseat. Turner described himself as 5'7" tall, about 180 pounds, and light skinned. He had a crew cut. He, Respondent, and Ceballos were all dressed in uniform. They saw Person A at the intersection of [REDACTED] Person A appeared to Turner to be 15 or 16 years old, and he was carrying a black backpack. When Respondent asked Person A from the car window what school he attended, Person A took off running. Turner described the run as "basically sprinting, like full-out running, pumping his arms, running, like, as fast as he could." Respondent exited the car and chased after Person A. Turner followed. Turner, who is in good condition, had to run at full speed in order to reach Person A, and he at one point passed Respondent. He chased Person A through a parking lot and behind a building.

At one point, Person A stopped running and was breathing heavily like he was out of breath. He turned around to face Turner, and Turner ordered him to get on the ground. Person A complied with the order and screamed, "Ahh, Ahh." Turner asked Person A what was wrong and also asked him why he ran. Meanwhile, he patted Person A down to make sure he did not have weapons. Turner also looked in the immediate area for any drugs or weapons that Person A might have thrown. He explained that people who flee from the police usually throw some kind of contraband along the way. He did not find anything. Person A was brought to a standing position, and Turner told him that he should not have run from the police. Turner did not recall exactly when Person A was handcuffed or when Respondent arrived at the scene. Three backup officers also came to the location. Hunt came downstairs, and Turner spoke with him. Both Turner and Hunt signed the Youth Referral Report, but Turner did not recall who filled in the captions on the form. Turner also prepared a UF-250, on which he indicated that he frisked and searched Person A. RX

C is a copy of the UF-250. He explained that he frisked Person A for his safety and that the frisk became a search when he felt something hard that could have possibly been a weapon. No weapon was found.

Less than five minutes passed between the time the officers first encountered Person A on Wilson Avenue and the time Person A was released to Hunt. At no point did Turner see any officer strike Person A. Turner was never accused by CCRB of any misconduct.

On cross-examination, Turner testified that he did not remember where he saw the hard object or what it looked like. In a June 19, 2012 CCRB interview he stated that the hard object was probably in the backpack. He also told CCRB that he did not have an independent recollection of searching Person A and that his statement was based solely on the UF-250. He indicated on the UF-250 that the stop occurred at the intersection of Grove Street and Wilson Avenue, which was not far from Menahan Street.

Turner reiterated that Respondent asked Person A what school he attended. Respondent did not ask, "Can you come here for a minute?" Turner prepared the UF-250 and Youth Referral Report on his own volition, not at the instruction of Respondent. Turner confirmed that when a person runs at the sight of a uniformed officer, it automatically makes him suspect that the person is carrying contraband or has just committed a crime.

Turner has conducted a lot of truancy stops, 50 or 60 of which were under the supervision of Respondent. Turner reviewed Patrol Guide Procedure 215-07, which was entered into evidence as RX D, and reads, "When a juvenile at least six or less than 18 years of age is observed on the street during school hours and there is probable cause to

believe such juvenile is a truant.” Respondent arrived behind the building at [REDACTED] [REDACTED] t 20 or 30 seconds after Turner and Person A. Respondent was present during the frisk. Respondent stayed with Person A while Turner searched the area for contraband. Turner did not recall if he asked Person A where he was coming from, where he went to school, or if he had a reason for being out of school at that time of day. CCRBX 9 is a photograph of Respondent from 2004.

On redirect examination, Turner clarified that when he said Respondent was present during the frisk he meant that Respondent was approximately 20 yards away and still running toward the location. Respondent was extremely tired and out of breath.

Upon questioning by the Court, Turner testified that he did not recall handcuffing Person A at any point. Nor did he recall turning Person A's pockets inside out. He considered himself to be the recorder that day, but paperwork can be prepared by either the recorder or operator.

Respondent

Respondent, a 20-year member of the Department, has already applied for service retirement. He was promoted to sergeant in January 2004. He is 5’9” tall and weighs approximately 300 pounds. He weighed close to 400 pounds in December 2011. He worked the truancy detail once or twice a week and has conducted thousands of truancy stops during the course of his career. He explained that it is Department procedure for truants to be handcuffed, frisked, and searched before being taken into custody. The truants are then driven back to school or to a holding facility. Respondent explained that the frisk and search are conducted for officer safety, but also because the officers want to

prevent the truants from bringing firearms or other dangerous objects with them to school.

Ceballos was Respondent's operator on December 2, 2011. Respondent sat in the car's passenger seat, and Turner sat in the backseat. The car was dark blue. It did not have tinted windows. While driving on [REDACTED], the officers saw Person A crossing the street. Respondent took notice of Person A because he was young-looking. The car pulled within four feet of Person A, and Respondent asked him, "Can you come here for a minute?" At that point, Person A took off in an all-out sprint. Respondent exited the car and chased after him.

Respondent did not run fast and was out of breath. Turner ran faster and passed him. Respondent at one point lost sight of Turner and Person A. When he next saw them, they were on the ground and Turner was picking Person A up to a standing position. Person A was already handcuffed. Ceballos and other backup officers arrived at the scene. Somebody in the area informed the officers that Person A's brother lived in the building. Respondent asked that the brother be retrieved.

Respondent explained that he suspected Person A of truancy, and the reason he stopped Person A was because he looked young and ran away when approached. Respondent never frisked or searched Person A, nor did he observe anybody else frisk or search Person A. Respondent did not have any conversation or physical contact with Person A. Person A was ultimately issued truancy paperwork and released to his brother. Respondent did not prepare any reports relating to the incident. The UF-250 that Turner prepared was reviewed by another sergeant.

On cross-examination, Respondent confirmed that it was his idea to stop Person A. He was passed quickly by Turner once the chase commenced. Respondent did not ask Person A how old he was, where he was coming from, what school he attended, or why he ran. Respondent testified that it was unusual for someone whom he approached in uniform to run away. The fact that Person A ran away raised his suspicion that Person A might have a weapon. Respondent agreed that officers are supposed to “investigate to see that there’s an articulable reason to suspect that someone is a minor before [the officer] detains [the person for truancy.]” He conceded that he did not do that in this case. Because he was not present throughout the entire incident, he did not have specific knowledge that a subordinate officer conducted such an investigation at the scene. He, however, had the following to say about his subordinate officers: “Yes, they did verify everything because they’re on my team and we know exactly how to do truants, how to do our conditions. We are a unit. We’ve worked together for years.” Respondent did not talk with Hunt at all.

On redirect examination, Respondent confirmed that Turner prepared the Youth Referral Report relating to the incident. On the report, Turner completed the captions for Person A's age, date of birth, school, and grade.

On recross-examination, Respondent confirmed that he never actually saw Turner speaking with Person A or filling out paperwork. He conceded that the information for the Youth Referral Report could have been obtained from Hunt. Respondent did not know that Person A had a note excusing him from school.

FINDINGS AND ANALYSISSpecification No. 1.

Respondent stands charged herein in that, on or about December 2, 2011 at approximately 10:00 hours, while assigned to the 83rd Precinct and on duty, in the vicinity of [REDACTED], abused his authority as a member of the New York City Police Department, in that he participated in the unlawful frisk of Jeffrey Person A.

Respondent testified that he observed Person A who appeared young. He attempted to speak to him by asking him to come over to the police car, but Person A took off running. He and Turner pursued him on foot. Both Respondent and Turner testified that they were in a dark blue, unmarked car at the time that Respondent spoke out to Person A, and that all occupants of the car were in uniform. Patrol Guide 215-07 speaks to this instance:

Procedure *When a juvenile, at least six (6) but less than eighteen (18) years of age, is observed on the street during school hours and there is probable cause to believe such juvenile is a truant.*

The Patrol Guide goes on to outline where the juvenile is to be taken and the proper paperwork to be completed. There is also a note which guides the officers on their actions:

NOTE *Truants may be frisked to ensure the officer's safety. An electronic metal detector may be used for this purpose, if available. Additionally, should the officers have an articulate reason to believe their safety is in danger, truants may be handcuffed.*

In this instance, after questioning Person A who took off in flight, Respondent and Turner had a basis to frisk Person A when they caught up to him for their safety. It was ascertained from the Youth Referral report that was prepared that Person A was within the age range (17) to be treated as a truant.

Accordingly, Respondent is found Not Guilty of Specification No. 1.

Specification No. 2

Respondent stands charged herein in that, on or about December 2, 2011, at approximately 10:00 hours, while assigned to the 83rd Precinct and on duty, in the vicinity of [REDACTED], Kings County, abused his authority as a member of the New York City Police Department, in that he participated in the unlawful search of Jeffrey Person A.

During cross-examination, Person A said that Respondent frisked and searched his pockets. Hunt, who testified before this Court said that he only observed one officer search Person A and he described him as Hispanic, about 5'7" or 5'8" with a moustache. He saw the officer first touch around Person A's pockets and then dig his hands inside the pockets. Hunt further testified on cross-examination that the officer who searched Person A was not noticeably heavyset.

To determine whether Person A was unlawfully searched by Respondent, it must be determined whether Person A is a credible witness. Person A began his testimony by denying that he ever ran when the police approached him from the vehicle and wanted to talk to him. It was established through several questions, including questions posed by the Court that Person A did run. Person A gave several accounts as to what happened to him.

At trial, Person A stated that after he was approached by Respondent in the car, he took two steps back and Respondent exited the vehicle and beat him and hit him with his radio. In a December 28, 2011 interview, Person A stated that he took two steps back before Respondent exited the vehicle and grabbed him by the neck. In a February 12, 2012 interview he denied walking away. In a February 3, 2012 interview, he stated that after Respondent said he fit the description of someone he was looking for he (Person A) replied, "Officer, that's not me." He later said in the same interview that he took two steps back and Respondent rushed him, grabbed his wind pipe and ripped the skin off his face. It was determined from repeated questioning of Person A and other witnesses that Person A ran from the location where he was initially questioned to at least a block or a block and a half away to 140 Menahan Street.

Person A repeatedly referred to Respondent as "Sergeant John" during his testimony. Yet he acknowledged during his testimony that it was not until his arrest on another matter in December 2011 and he went back to the 83 Precinct to retrieve his shoelaces that he learned Respondent's name. Person A also acknowledged that he has problems with his short term memory. Person A denied during cross-examination that he stated that the four backup officers hit him. He recalled stating to the investigator that the female officer placed her knee on his back, but that he could not recall if that actually happened. Person A testified that Respondent frisked him and searched his pockets, and a white officer also patted him down a second time.

The problem with Person A's account is that it is difficult to ascertain which portion of the story is true and accurate. It seems to change every time he tells it. At trial Person A testified that Respondent picked up his report card, note from the nurse and his hat all

from the ground and placed his hat on his head backward. In a previous interview, Person A said he was not wearing a hat and never wears hats. The other problem with Person A's account is that he testified that he told Respondent that Hunt was his brother and that "the officers" released him after looking at Hunt's identification. This account makes it seem as if Person A had encounters with more than one officer at the scene.

This view of an encounter with other officers comes into question when a review is made of the paperwork completed with respect to this matter. Turner testified that he and Respondent chased Person A, but that it was he who passed Respondent in the chase, caught up to Person A and made him go to the ground. He testified that he frisked Person A for his safety and during the course of the frisk, he searched Person A because he felt a hard object, but he did not recover a weapon. He noted that Person A did have a black backpack with him and he said at his CCRB interview that he speculated that the hard object could have been in the backpack. He also noted that he did not have an independent recollection of searching Person A and had to rely on the Stop, Question and Frisk Report (UF-250) that he prepared. In addition, Turner noted that he and Hunt signed the Youth Referral form.

The Court is left with the dilemma as to whether Person A's short term memory problem left him with the inability to recall precisely what happened to him on December 2, 2011. At trial he testified that he could not recall if he was carrying a backpack. Three weeks after the incident he told the CCRB investigator that he was carrying a black backpack. Two months later, he told the same investigator that he had no reason to have a backpack since he was just picking up his report card.

Person A mentioned that a white officer patted him down, but he did not mention that that same officer searched him or participated in his release. But Person A did note that “officers” released him to Hunt. Hunt’s testimony was important because he testified that he only saw one officer search Person A and that he was not noticeably heavyset. He described the officer as being 5’7 or 5’8” Hispanic with a moustache who touched around Person A's pockets and then dug inside of the pockets. This account is not corroborated by Person A who said the officer who searched him was somewhat chubby and turned his pockets inside out. Respondent was described, without objection, as being around 400 pounds on the incident date. If he were the officer who searched Person A, either Person A or Hunt should have remembered to give that description. Turner described himself without objection as being 5’7” tall, about 180 pounds and light-skinned with a crew cut. The Court observed Turner in Court with a tanned complexion who could pass for someone of Hispanic or Latin descent and the Court notes that the spectrum of skin tones of Hispanic or Latin can run the gamut of a fair or white-skinned complexion to a light-skinned or dark-skinned complexion person. This is despite the fact that the CCRB Administrative Prosecutor stated in her summation that the only Hispanic male officer at the scene was Respondent. This, however, was not fleshed out at this proceeding. There was no testimony elicited from Respondent to conclude that he is of Hispanic descent. In fact, his Department record (CCRB X 9) lists his race as “Black.” No such testimony was elicited from any other male officer who testified as to Respondent’s ethnicity or their own ethnicity.

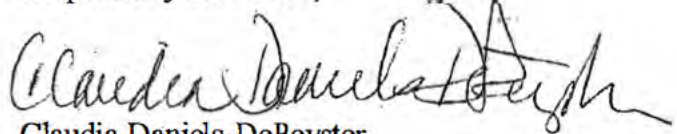
Hunt testified that he told an officer that Person A was his little brother and the officer told him that Person A was not in school. The officer told Hunt that Person A could

be released if Hunt had identification. Hunt presented his identification and signed a release form and Person A was released to him. Hunt acknowledged that he did not ascertain any of the officer's names. It is established from the evidence that Hunt and Turner (not Respondent) signed the Youth Referral form that led to Person A's release. Based on this evidence, Turner appears to be the officer who frisked and searched Person A. Turner testified to this fact, Hunt described an officer who could fit his description and the paperwork corroborates this fact. There is no corroboration of Person A's account that he was searched by Respondent.

It is based on all the inconsistent statements given by Person A that this Court is unable to conclude by a preponderance of the credible evidence that Respondent participated in the unlawful search of Person A. Although Person A said Respondent searched him, that testimony is not corroborated by Hunt who said an officer, not heavyset, searched Person A.

Accordingly, it is recommended that Respondent be found Not Guilty of Specification No. 2.

Respectfully submitted,



Claudia Daniels-DePeyster
Assistant Deputy Commissioner-Trials

APPROVED

APR 03 2014

WILLIAM J. BRATTON
POLICE COMMISSIONER